

III.

The Commission finds the following:

A. SUMMARY

During the period between at least July 16, 2011 and at least September 2012 (the “Relevant Period”), Respondent violated Section 4(a) of the Act by offering to enter into, entering into, confirming the execution of, and conducting an office or business for the purpose of soliciting, accepting orders for, and otherwise dealing in illegal, off-exchange retail commodity transactions. Respondent was the owner and operator of Bentley Metals LLC (“Bentley Metals”). Bentley Metals used telemarketers and an internet web page to solicit retail customers to invest in financed off-exchange precious metals transactions. Specifically, the transactions were financed off-exchange precious metals transactions with individual investors who were not eligible contract participants (“ECPs”) or eligible commercial entities (“ECEs”) as defined by the Act. In connection with those retail commodity transactions, Bentley Metals accepted money from these customers. As such, Bentley Metals acted as a futures commission merchant (“FCM”) without being registered with the Commission, in violation of Section 4d(a)(1) of the Act. Bentley Metals received commissions and fees totaling fifty-five thousand, four hundred forty two dollars (\$55,442) in connection with seventeen (17) illegal off-exchange, leveraged metals transactions.

Respondent was the controlling person of Bentley Metals, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations of the Act. Therefore, Respondent is liable for Bentley Metals’ violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

B. RESPONDENT

Ferone is a resident of Miami, Florida. Ferone was the owner, operator and controlling person of Bentley Metals.

Ferone applied for registration as a floor trader in 1994, and also applied for registration as a floor broker in 1995. However, the applications were withdrawn in 1996. In 1996, Ferone, at the time a telephone clerk on the NYMEX trading floor, was immediately suspended from the NYMEX trading floor. In January 2000, Ferone was permanently banned from the NYMEX floor and fined \$200,000 in connection with a trading scheme involving the noncompetitive filling of customer orders, bucketing of trades and the fraudulent allocation of trades.

C. OTHER RELEVANT ENTITIES

Bentley Metals was a Delaware LLC with its principal place of business in Hoboken, New Jersey. Bentley Metals, via telemarketing and an internet web page, solicited retail customers to execute financed off-exchange precious metals transactions. Bentley Metals ceased operations in or around September 2012, and was formally cancelled as an LLC in December

2012, when Respondent filed a certificate of cancellation with the Delaware Division of Corporations.

During the Relevant Period, Bentley Metals introduced customers to Worth Bullion Group, Inc., a/k/a Worth Group, Inc. (“Worth”), which held itself out as a precious metals wholesale and clearing firm that purported to confirm execution of customer precious metal transactions. Worth is a Florida-based precious metals wholesaler that might also be described as a dealer or broker of precious metals. Worth has offered to enter into, executed and confirmed for the purpose of soliciting, accepting any order for, or otherwise dealing in agreements, contracts, or transactions in precious metals on a leveraged, margined or financed basis. Worth operated or conducted an office throughout the United States using a network of many solicitation firms or “introducers” such as Bentley Metals.

D. FACTS

From at least July 16, 2011 through at least September 2012, Bentley Metals used telemarketers and an internet web page to solicit retail customers to invest in off-exchange financed precious metals transactions through Worth. Respondent, as the owner and operator of Bentley Metals, hired, supervised and paid the telemarketers who solicited retail customers on behalf of Bentley Metals.

The Bentley Metals website provided potential investors with information regarding the financed metals purchases it offered. The website stated that customers could finance their precious metals transactions, putting down a deposit of 20 to 25 percent of the total value of the metal they would be purchasing and receive a loan for the remaining value of the metals being purchased. The website further stated that the customers would pay interest, costs and service fees in connection with a financed purchase, as well as storage fees should the customer elect to utilize the storage facility options that Bentley Metals provided. Bentley Metals’ website further stated that customers were “purchasing the physical precious metal” and indicated they could either take physical delivery of the metal themselves or have their metals purchase “delivered to a depository backed by Bentley Metals LLC.” The website specifically noted that customers who “chose to use [Bentley Metals’] leveraging option . . . will receive a Commodity Transfer Notice” as their “certificate of ownership” of the metals they purchase.

The Bentley Metals representatives made similar representations to the Bentley Metals’ customers. Bentley Metals’ customers were told by Bentley Metals representatives: (i) that to make a financed metals purchase, the customer needed to deposit only a percentage of the total value of the metals they sought to purchase, and that the customer would receive a loan for the remaining amount; (ii) Bentley Metals could arrange for their metals to be stored at a secure storage facility; and (iii) that the financed purchase would be subject to various fees including commissions, storage fees and interest on the loan.

After a customer agreed to open an account with Bentley Metals and enter into a financed precious metals purchase, Bentley Metals provided account opening documentation to the customer, managed the account opening process, and directed the payment of customer funds to Bentley Metals. Bentley Metals would deposit the customer funds it received and use these funds to make the customer’s initial payment to Worth towards the total amount of leveraged

metals purchased, and pay the commissions the customer was being charged by Bentley Metals. These commissions equaled 15% of the total value of the precious metals purchased. Once Bentley Metals had received the customer's funds, they would contact the customer, confirm the price of the metals Worth was offering, obtain authorization from the customer to make the off-exchange retail leveraged precious metals purchase, and effect the purchase for the customer with Worth.

During the Relevant Period, Bentley Metals received commissions and fees totaling fifty-five thousand, four hundred forty two dollars (\$55,442) in connection with seventeen (17) illegal off-exchange, leveraged metals transactions.

Respondent was Bentley Metals' sole owner and controlled its day-to-day operations. Respondent was the sole signatory on Bentley Metals' bank accounts, had exclusive control over the Bentley Metals bank accounts, and signed Bentley Metals' lease for its offices in Hoboken, New Jersey. Respondent hired, supervised and paid the Bentley Metals employees, including the telemarketers. Respondent participated in the off-exchange leveraged metals transactions in that he: (i) controlled customer funds and directed the transfer of customer funds to Worth; (ii) supervised the Bentley Metals cold callers; and (iii) participated in verifying the retail off-exchange leveraged metals prices Worth was offering to Bentley Metals' customers.

IV.

LEGAL DISCUSSION

A. The Commission Has Jurisdiction

Bentley Metals offered precious metals transactions to, and entered into such transactions with, persons who were not ECPs or ECEs. Generally, Bentley Metals' customers were unsophisticated, individual investors who did not meet the \$10 million discretionary investment threshold to be considered ECPs.² Moreover, Bentley Metals offered and entered into such transactions on a financed, margined or leveraged basis. Bentley Metals' retail financed precious metals transactions fall squarely within the Commission's jurisdiction under Section 2(c)(2)(D) of the Act. Moreover, the retail financed precious metals transactions executed by Bentley Metals through Worth did not result in actual delivery to the customer. Thus, the transactions are not excepted from the Commission's jurisdiction under Section 2(c)(2)(D)(ii)(III) of the Act. *See generally CFTC v. Worth Group, Inc.*, Case No. 13-80796-CIV-RYSKAMP/HOPKINS (S.D. Fla. April 10, 2014) (concluding that the CFTC has enforcement jurisdiction over Worth's retail commodity transactions).

² As is relevant to this matter, Section 1a(18)(xi) of the Act, 7 U.S.C. § 1a(18)(xi)(2012), defines an ECP as an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$10,000,000, or which is in excess of \$5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.

B. Respondent is Liable as the Controlling Person Under Section 13(b) of the Act for Bentley Metals' Violations

Pursuant to Section 13(b) of the Act, “any person who, directly or indirectly, controls any person who has violated any provision of [the Act]...may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person. In such action, the Commission has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.” The Commission must establish that (1) the respondent “directly or indirectly” controlled that corporation or person; and (2) that the respondent “did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.” See Section 13(b) of the Act. “A fundamental purpose of Section [13(b)] is to allow the Commission to reach behind the corporate entity to the controlling individuals of the corporation and to impose liability for violations of the Act directly on such individuals as well as the corporation itself.” *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1334 (11th Cir. 2002) (internal quotation marks and citation omitted), *cert. denied*, 543 U.S. 1034 (2004).

To satisfy the first prong, the Commission must show the individual possessed general control over the operation of the entity principally liable. *R.J. Fitzgerald & Co., Inc.*, 310 F.3d at 1334 (recognizing an individual who “exercised the ultimate choice-making power within the firm regarding its business decisions” as a controlling person). A court may find that control exists where evidence demonstrates that a defendant is an officer, principal, or authorized signatory on the company’s bank accounts. *In re Spiegel*, 1988 WL 232212, at *8 (CFTC Jan. 12, 1988). To satisfy the absence of good faith standard, the CFTC must show that the individual failed to maintain a “reasonably adequate system of internal supervision and control” or did not oversee the system “with any reasonable diligence.” *Monieson v. CFTC*, 996 F.2d 852, 860 (7th Cir.1993) (quoting *Harrison v. Dean Witter Reynolds, Inc.*, 974 F.2d 873, 881 (7th Cir.1992)). To satisfy the “knowingly induced” standard, the Commission must show that the controlling person had actual or constructive knowledge of the core activities that make up the violation at issue and allowed them to continue. *R.J. Fitzgerald & Co., Inc.*, 310 F.3d at 1334.

With respect to control, Ferone had both general control over Bentley Metals and specific control over the conduct underlying Bentley Metals’ violations, *i.e.*, Bentley Metals’ offering to enter into, entering into, and confirming the execution of retail financed precious metals transactions, and Bentley Metals’ conducting an office and business in the United States for soliciting, accepting, and otherwise dealing in retail financed precious metals transactions that were not conducted on or subject to the rules of a designated or registered contract market or derivatives transaction execution facility for such commodity. Ferone was the owner and operator of Bentley Metals. Ferone was the sole signatory on Bentley Metals’ bank accounts, had exclusive control over the Bentley Metals bank accounts and signed Bentley Metals’ lease for its offices in Hoboken, New Jersey. Ferone hired, supervised and paid the Bentley Metals employees, including the telemarketers. Ferone knew Bentley Metals was engaged in the solicitation, offering and accepting of retail customer orders for agreements, contracts or transactions involving off-exchange leveraged metals transactions and participated in those transactions in that he: (i) controlled customer funds and directed the transfer of customer funds

to Worth; (ii) supervised the Bentley Metals cold callers; and (iii) participated in verifying the retail off-exchange leveraged metals prices Worth was offering Bentley Metals' customers.

In addition to control, the Commission must show the controlling person knowingly induced, directly or indirectly, the acts constituting the violation, or did not act in good faith. To show knowing inducement, the Commission must show that a respondent had actual or constructive knowledge of the core activities that constituted the violation and allowed the activities to continue. *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 34,767. As noted above, to show lack of good faith, the Commission must show that a respondent did not have an adequate system of internal supervision, or that a defendant did not enforce such system with reasonable diligence. *Monieson*, 996 F.2d at 860.

Ferone had actual knowledge that Bentley Metals' business engaged in off-exchange, retail financed precious metals transactions, because it was the basic nature or essence of the business. The fact that Ferone participated in the wrongdoing *ipso facto* demonstrates a lack of adequate supervision and control on Ferone's part and therefore satisfies the lack of good faith standard. His participation in the wrongful conduct also satisfies the "knowingly induced" standard in that Ferone had actual knowledge of the wrongdoing and allowed it to continue. *See Spiegel*, 1988 WL 232212, at *7 ("[I]f the controlling person knowingly induces acts that amount to a violation, he will not escape liability merely because he acted in good faith."); *id.* ("[W]e reject the view that a controlling person must know that the acts at issue amount to a violation in order to be held to have 'knowingly' induced the acts constituting the violation."). Thus, Ferone did not act in good faith, and knowingly induced the conduct in violation of Sections 4(a) and 4d(a)(1) of the Act, and is liable for those violations as Bentley Metals' controlling person.

C. Respondent Did Not Act In Good Faith, or Knowingly Induced, Directly or Indirectly, The Acts Constituting The Underlying Violations of Sections 4(a) and 4d(a)(1) of the Act

As stated above, retail commodity transactions within the scope of Section 2(c)(2)(D) of the Act are subject to enforcement under Section 4(a) of the Act, among other provisions, as if such transactions are commodity futures contracts. Section 4(a) of the Act makes it illegal for any person to undertake a variety of actions in connection with retail commodity transactions, including: offering to enter into, entering into, executing, confirming the execution of, or conducting any office or business anywhere in the United States for the purpose of soliciting, or accepting any order for, or otherwise dealing in the transactions in, or in connection with, a commodity futures contract, unless the transactions are conducted on a regulated exchange.

Bentley Metals offered to enter into, entered into, and confirmed the execution of retail financed precious metals transactions.³ Bentley Metals also conducted an office or business in

³ Under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), as well as Regulation 1.2, 17 C.F.R. § 1.2 (2013), a principal is strictly liable for the conduct of its officials, agents, or other persons acting for it within the scope of the official's, agent's or other person's employment or office. *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986). Ferone, along with the Bentley Metals telemarketers, were officials, agents, or other persons acting for Bentley Metals in the scope of their employment or office when they violated the Act. Bentley Metals is therefore liable for conduct of its agents.

the United States for the purpose of soliciting, accepting orders for, and otherwise dealing in retail financed precious metals transactions. *See* Section 2(c)(2)(D)(iii) of the Act, 7 U.S.C. § 2(c)(2)(D)(iii)(Supp. V 2011) (applying Section 4(a) to transactions as if they were futures). None of the retail financed precious metals transactions were conducted on or subject to the rules of a board of trade that has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for precious metals. Bentley Metals therefore violated Section 4(a) of the Act.

Section 4d(a)(1) of the Act makes it unlawful for any person to engage as an FCM, unless such person is registered with the Commission as an FCM and such registration has not expired nor been suspended or revoked. The Act defines FCM to include, among other things, a corporation that is engaged in soliciting or accepting orders for any agreement, contract, or transaction described in Section 2(c)(2)(D)(i) (retail commodity transactions) and in or in connection with such acceptance of such orders, accepts money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. 7 U.S.C. § 1a(28)(A)(i)(I)(aa)(DD) and (II). Bentley Metals acted as an FCM by soliciting and accepting customers' orders for financed precious metals transactions. In connection with those transactions, Bentley Metals accepted funds from those customers including customers who were not ECPs. As such, Bentley Metals acted as a FCM. This conduct violated Section 4d(a)(1) of the Act.

Ferone controlled Bentley Metals and knowingly induced, directly or indirectly, Bentley Metals' conduct constituting violations of the Act, and did not act in good faith. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Ferone is liable for Bentley Metals' violations of Sections 4(a) and 4d(a)(1) of the Act.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the relevant period, Respondent violated Sections 4(a) and 4d(a)(1) of the Act, 7 U.S.C §§ 6(a) and 6d(a)(1) (2012).

VI.

OFFER OF SETTLEMENT

Respondent has submitted an Offer in which he, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;

C. Waives:

1. the filing and service of a complaint and notice of hearing;
2. a hearing;
3. all post-hearing procedures;
4. judicial review by any court;
5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
6. any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2013), relating to, or arising from, this proceeding;
7. any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;

E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:

1. makes findings by the Commission that Respondent violated Sections 4(a) and 4d(a)(1) of the Act; 7 U.S.C. §§ 6(a) and 6d(a)(1) (2012);
2. orders Respondent to cease and desist from violating Sections 4(a) and 4d(a)(1) of the Act;
3. orders Respondent to pay restitution in the amount of fifty-five thousand, four hundred forty two dollars (\$55,442), plus post-judgment interest;
4. orders Respondent to pay a civil monetary penalty of one hundred thousand dollars (\$100,000); plus post-judgment interest;
5. appoints the National Futures Association ("NFA") as Monitor in this matter;

Upon consideration, the Commission has determined to accept Respondent's Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 4(a) and 4d(a)(1) of the Act, 7 U.S.C. §§ 6(a) and 4d(a)(1) (2012).
- B. Respondent shall pay restitution in the amount of fifty-five thousand, four hundred forty two dollars (\$55,442) within thirty (30) days of the date of entry of the Order (“Restitution Obligation”). Should Respondent not satisfy his Restitution Obligation in full within thirty (30) days of the date of entry of the Order, post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

To effect payment by Respondent and the distribution of restitution to Respondent’s customers, the Commission appoints the NFA as “Monitor.” The Monitor shall collect payments of the Restitution Obligation from Respondent and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, it shall not be liable for any action or inaction arising from its appointment as Monitor other than actions involving fraud.

Respondent shall make his payments of the Restitution Obligation under this Order in the name of the “Bentley Metals/Louis J. Ferone Settlement Fund” and shall send such payments by electronic funds transfer, or U.S. postal money order, certified check, bank cashier’s check, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The Monitor shall oversee Respondent’s Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Respondent’s customers identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of payments of the Restitution Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission, as discussed below.

- C. Respondent shall pay a civil monetary penalty of one hundred thousand dollars (\$100,000) within thirty (30) days of the date of entry of this Order (the "CMP Obligation"). Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012). Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581 and to the Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005.

- D. Respondent and his successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither he nor any of his successors and assigns, agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and his successors and assigns shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.
 2. Cooperation with Monitor: Respondent shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondent's customers. Respondent shall execute any

documents necessary to release funds that he has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

3. Cooperation with the Commission: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.
4. Partial Satisfaction: Respondent understands that any acceptance by the Commission or the Monitor of partial payment of Respondent's Restitution Obligation or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to the Order or a waiver of the Commission's right to seek to compel payment of any remaining balance.
5. Change of Address/Phone: Until such time as Respondent satisfies in full his Restitution Obligation or CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 25, 2014